

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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NATHANIEL PORTER,  
a/k/a N. KALONJI OWUSU,

Plaintiff,

v.

PATRICIA CARUSO, *et al.*,

Defendants.

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Case No. 1:05-CV-562

Hon. Richard Alan Enslen

**ORDER**

Defendants Randy Parsons, Karen Bozung, M. Morris, and Dave J. Burnett have moved this Court for equitable relief (a stay of proceedings) pending the United States Supreme Court's decision in *Williams v. Overton*, 126 S. Ct. 1463 (2006) (cert. granted) and *Jones v. Bock*, 126 S. Ct. 1462 (2006) (cert. granted). Plaintiff opposes the request. Oral argument is unnecessary.

Equitable factors do not favor the grant of relief in light of the Sixth Circuit Court of Appeals' recent decision in *Spencer v. Bouchard*, – F.3d –, 2006 WL 1528876 (6th Cir. June 6, 2006). In that decision, Judge Moore determined that the so-called “total exhaustion rule” is not the law of this Circuit since the first binding panel decision was made in the case of *Hartsfield v. Vidor*, 199 F.3d 305 (6th Cir. 1999). Judge Moore also noted the pending appeals before the Supreme Court, but decided the appeal because “[i]n the meantime, . . . we have an obligation to decide the case before us.” The Court concurs with the rulings in *Spencer*, including the assessment that stays of section 1983 cases pending the Supreme Court's decision (which will not occur until after the beginning of the next fall term) are not advised when constitutional liberties are at stake.

**THEREFORE, IT IS HEREBY ORDERED** that Defendants Randy Parsons, Karen Bozung, M. Morris, and Dave J. Burnett's Motion to Hold Case in Abeyance (Dkt. No. 61) is **DENIED**.

DATED in Kalamazoo, MI:  
June 29, 2006

/s/ Richard Alan Enslen  
RICHARD ALAN ENSLEN  
SENIOR UNITED STATES DISTRICT JUDGE